

settle him on it. It is insisted, that having made the purchase from Mr. Emory, and the son having taken possession, and having made improvements upon it, his equitable title dates from that period, and that if the pecuniary condition of the father at that time justified such a settlement upon the son, his subsequent embarrassments cannot be allowed to defeat it. It appears, however, from the evidence of the father, who was examined as a witness for the defendants under an order, that he subsequently gave his son a bond of conveyance for the land, and that as the land was worth more than he thought he could give to each of his children, his said son agreed to pay him five thousand dollars. If, therefore, the previous verbal agreement had reference to this particular parcel of land, (of which, however, there is no evidence,) it is quite clear that it was subsequently modified, and that the actual agreement between the son and the father, is to be found in the bond of conveyance in which all previous agreements, resting in parol, are merged and extinguished. *Parkhurst vs. Van Cortlandt*, 1 *Johns. Ch. Rep.*, 273. This bond, which appears from the evidence of Walter Worthington, was, and he presumed, is now, in the possession of the counsel of his son, is not produced, nor is its absence accounted for in any way, but, nevertheless, it is urged that there is sufficient evidence of its date and contents, to authorize this Court to give the defendant the benefit of it, in the determination of the question before it. The witness, in his examination in chief, after stating that he gave his son the bond, some time after the purchase of the property in 1817 from Mr. Emory, said he did not recollect the date, but that the bond would speak for itself. And it is admitted, that so far as the question depends upon the proof, the date and contents of the bond are not properly before the Court as evidence. But it is supposed, and has been insisted, that by the cross-examination, the objection to the admissibility of the parol evidence is removed, and that this Court must decide the cause with reference to it, thus carrying back the inception of the defendant's title to a date anterior to the deed of 1825.